

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



April 6, 2005

To: John Kirlin, Executive Director
Marine Life Protection Act Initiative

From: Peter Douglas, Executive Director
California Coastal Commission

Re: **Comments on Revised Master Plan Framework**

Thank you for the opportunity to review the March 15, draft Framework for implementation of the MLPA. We commend you and your associates in putting together this comprehensive, well organized and well thought through document. You have set forth an ambitious agenda, but one if implemented as proposed that will certainly merit broad public support.

Due to time constraints, the following are our summary comments and observations that I pass on for your consideration.

1. In the background section (pg 4) there should be mention of the fact that in November 1972, California voters approved, by a 55% margin, "*The California Coastal Conservation Act*." This law established the California Coastal Commission and called for preparation of the *California Coastal Plan*. That Plan was completed in 1975 and constitutes a comprehensive set of policy recommendations and call to action for the conservation, restoration and careful use of the California coast, including offshore waters.

Following most recommendations of the *Coastal Plan*, the Legislature enacted *The California Coastal Act of 1976* that made permanent the California Coastal Commission (CCC) and established strong state policies to guide the planning and regulation of coastal development along the entire California coast, including offshore waters.

In 1977, California's Coastal Management Program was approved by the federal government, thereby delegating to the CCC broad authority to review all federal projects, permits and other activities that have any effect on coastal zone resources (the coastal zone is defined as extending from a mapped inland boundary to the seaward limit of State jurisdiction – 3 miles). The CCC is the only State agency

with any such comprehensive controls over federal onshore and offshore activities, other than the Bay Conservation and Development Commission, which has similar authority in and around SF Bay.

2. On page 8, in discussing studies and findings relative to the deterioration of ocean water quality and biodiversity, mention should be made of the findings last year of the *Pew Oceans Commission* and the *U.S. Commission on Ocean Policy*. As documented in both reports, it is also important to underscore the significant negative impact on marine life resulting from the loss of coastal wetlands to development. Mention should also be made of California's statewide non-point source pollution control program, and especially its coastal non-point pollution control program that has been approved by both US EPA and NOAA and that is now in process of being implemented. This program is important to improving marine water quality and enhancing the biologically productive of these waters.
3. On page 14, et seq, there is no mention of the role of the CCC and possible application of Coastal Act policies and review. Establishment of an MPA may require a coastal development permit. While the goals and objectives of the MLPA and the implementation of MPA's are certainly consistent with the goals and objectives of the Coastal Act, the Coastal Act requires that a "development" activity in State waters, including an activity that causes a "... change in the intensity of use of water, or of access thereto..." obtain a coastal development permit. No coastal development permit will be necessary, however, if an MPA only prohibits the capture, removal or disturbance of living biological resources, and does not limit the public's access to State waters. Although this type of MPA still results in a "change in the intensity of use of water" for purposes of section 30106 of the Coastal Act, it also constitutes a "wildlife and fishery management program" within the meaning of Coastal Act section 30411(a). Coastal Act section 30411(a) recognizes that the California Department of Fish and Game and the Fish and Game Commission are the principal state agencies responsible for the establishment and control of wildlife fishery programs and that "the [Coastal] Commission shall not establish or impose any controls with respect thereto that duplicate or exceed regulatory controls established by these agencies pursuant to specific statutory requirements or authorization." However, if any physical development is associated with the establishment of an MPA (e.g., signs) and/or the MPA prohibits public access to State waters, a coastal development permit will likely be required. We want to work with you to ensure that any review that may be deemed appropriate or necessary pursuant to applicable Coastal Act provisions is timely, the minimum necessary to comply with the Coastal Act and avoids potential conflicts.

It is important to note that what is said above applies in State waters. In federal waters, a federal consistency review would be required. The Commission has some discretion as to the extent of such review. An important consideration is that the

establishment of MPAs clearly furthers Coastal Act policies set forth in section 30230 of the Public Resources Code:

“Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.”

In addition, section 30231 of the PRC provides that: *“The biological productivity and quality of coastal waters ... shall be maintained and where feasible, restored....”*

Accordingly, and depending on the elements included in any proposed MPA or other reserve in federal waters, consistency should not be difficult to establish.

4. In the section “Other Programs and Activities Other Than Fishing” on page 39, mention should be made of California’s Coastal Management Program pursuant to the Coastal Act, the McAteer-Petris Act (BCDC), and the coastal marine water quality non-point source pollution control program being implemented by the State and Regional Water Quality Control Boards and the CCC.
5. On page 46, the discussion on signage should include reference to the need to coordinate with the CCC and appropriate local governments pursuant to any applicable Coastal Act provisions.
6. Finally, in the section on “Financing”, it is important to address permanent and adequate funding. This is not a small point. If California truly wants an effective marine life protection program, it will require adequate and reliable public funding, and that means new funding not dependent on the good will and temporary generosity of philanthropic foundations and other NGO’s. The most important thing that can be done to ensure long-term conservation of marine and coastal resources, by, among other means, the effective implementation of the MLPA, is to secure a permanent and adequate source of funding. Certainly, these are difficult budgetary times, but it is imperative to provide a clear and candid assessment to the public and policymakers who are going to look to this Framework and its recommendations for guidance.

These are our major summary comments. If you have any questions, please don’t hesitate to contact the Commission’s Chief Deputy Director, Susan Hansch, or me.